IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-6-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD No.1346 of 1997

1.Marimuthammal
2.D.Venkatachalam
3.Saraswathi
4.Ratinam @ Susheela .. Petitioners/JD

vs

1.Vaithi
2.Venkatachalam
3.Kannammal
4.Thailammal
5.Pachaiyappan
6.Pachiayammal
7.Mani
8.Jayalakshmi
9.Kannan
10.Vijayalakshmi
11.Saravanan .. Respondents
(R11 GIVEN UP)

Civil revision petition preferred under Sec.115 of the Code of Civil Procedure against the fair and decretal order dated 30.4.1997 in REA No.435 of 1984 in REP No.322 of 1978 in O.S.No.157 of 1970 on the file of the Additional Subordinate Judge, Salem.

For Petitioners : Mr.D.Shivakumaran
For Respondents : Mr.R.Devaraj for R1
Mr.S.Rajasekaran
for RR3 to 5 and 7 to 9

R11 given up

ORDER

An order of dismissal of an application in REA No.435 of 1984 by the Additional Subordinate Judge, Salem, seeking to set aside the sale made in E.P.No.322 of 1978 pursuant to a decree passed in O.S.No.157/70, is the subject matter of challenge in this revision.

2.The Court heard the learned Counsel on either side.

3.Concededly, a suit was filed by the father of the respondents 4 to 10 herein namely Kandasami, in O.S.No.157 of 1970 seeking the reliefs of specific performance and also mesne profits. It was decreed. An appeal which arose therefrom, in

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A.S.No.110 of 1972, was allowed, and the specific performance decree was set aside. Following the same, an enquiry in respect of the mesne profits, was conducted, and by an order dated 23.8.1978, the mesne profits was fixed at Rs.22,000/- pursuant to which E.P.No.322/78 was filed on 29.11.1978. The property was brought for sale, and the auction was held on 9.9.1982. While the matter stood thus, an application to set aside the ex-parte order of sale was filed along with an application to condone the delay of 2 days in re-presentation of the same. That application was dismissed. Aggrieved, the judgment debtors took it in CRP No.1969/83 before this Court, and the same was allowed. In the meanwhile, the sale originally made on 9.9.1982, was confirmed on 30.11.1982. Against the order passed in the mesne profits enquiry, one of the judgment debtors filed an appeal in A.S.No.24/79, and by a judgment dated 8.11.1983, it was modified as one for Rs.12,500/-. Not satisfied with the same, the decree holder took it on appeal in LPA No.79/84 wherein it was further enhanced to Rs.18,000/-.

4.Under the circumstances, the instant application was filed by the judgment debtors seeking to set aside the sale on the grounds that firstly, the property was actually having a higher extent of 2 acres and odd in one block, and 32 cents in the other block; that it was actually in excess; that the lower Court has not considered these aspects of the matter; but, the entire property was brought for sale; that secondly, the property was purchased by the son-in-law of the decree holder; that it was collusive; that thirdly, the payments were actually made in between; that those payments were not given credit to; that fourthly, there was a modification of the original amount of Rs.22,000/- found on the enquiry of mesne profits; that it was appealed against in A.S.No.24/79, where it was reduced; that subsequently by a letter patent appeal in LPA No.79/84, it was enhanced; that all these things have been thoroughly suppressed by the decree holder; that on these grounds, the sale was to be set aside; that though all these contentions were urged before the Executing Court, it has not considered all or any one of them, but has dismissed the application, and hence, the order has got to be set aside. In support of his contention, the learned Counsel for the petitioner relied on two decisions of the Apex Court reported in (i) AIR 2001 SUPREME COURT 3832 (KRISHNA GOPAL CHAWLA AND OTHERS V. STATE OF U.P. AND ANOTHER) and (ii) 2006-2-L.W. 770 (BALAKRISHNAN V. MALAIYANDI KONAR).

5.Countering the above contentions, the learned Counsel for the first respondent/auction purchaser would submit that in the instant case, an order was passed in the year 1978 fixing the mesne profits; that in order to recover the same, E.P. was filed in 1978; that the property was brought for sale; that it was sold in September 1982; that it has also been confirmed in November 1982; that a sale certificate has also been issued; that only the delivery is awaited; that in the appeal filed by the judgment debtor, there was no stay; that the appeal was allowed reducing the mesne profits amount, only in November 1983; that the letter patent appeal came to an end only in 1988; and that all these happenings were subsequent to the confirmation of sale. The

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learned Counsel would further add that there is no evidence to show that there was any collusion between the decree holder and the auction purchaser, the first respondent herein; that there was no suppression in the instant case as alleged by the petitioner herein; and that since the third party-purchaser purchased the property in September 1982, and it was subsequently confirmed on 30.11.1982, and all these things have taken place subsequently, no question of suppression would arise. Added further the learned Counsel that it is true that the property is having an extent of 2 acres and odd in one block, and 32 cents in the other block; that the property was sold in 1982; and that the value of the property in 1982 should be taken into consideration. The learned Counsel would further add that there is no question of amendment of the decree that would arise at this stage since the sale was already confirmed in favour of the third party; that as far as the auction purchaser is concerned, he is to tender the rest of the amount; that as far as the decree holder is concerned, if there is any amount available, he is to receive it and execute the decree; that the contentions what were all raised before the lower Court, were put forth in this revision; that there is not even one irregularity that is noticed for setting aside the sale; that the lower Court has given an elaborate order and rejected the contentions, and hence, it has got to be sustained.

6.After careful consideration of the rival submissions made, this Court is of the considered opinion that the revision does not carry any merit whatsoever. Admittedly, pursuant to an enquiry for mesne profits, there was an order that Rs.22,000/- must be paid by the judgment debtors to the decree holder that was made on 23.8.1978. Thereafter, E.P. was filed in E.P.No.322 of 1978, and the property was brought for sale and sold on 9.9.1982. It was also confirmed on 30.11.1982. It is not in controversy that the sale certificate has also been issued pursuant to the confirmation of sale. Now, the contentions put forth by the learned Counsel for the petitioner remain for consideration.

7.Firstly, this Court is unable to notice suppression of any fact for the simple reason that the property was sold on 9.9.1982, and the sale was confirmed in November 1982. Even in the appeal filed by the judgment debtor in A.S.No.24/79, there was no stay. Apart from that, the verified decree was passed in 1983. In such circumstances, there was no impediment for the judgment debtors to raise this point when the matter was pending for sale, but not done at that time. Subsequently, the revision was also pending in CRP No.1969/83, and pending the revision, there was no application for stopping the lower Court from proceeding further. Now, at this juncture, it is pertinent to point out that the sale confirmation has taken place on 30.11.1982 even before the disposal of the revision. Added further, even the LPA taken by the decree holder, also came to an end in 1988. Thus, all would go to show that the confirmation of sale was earlier in point of time, and the subsequent happening was the said L.P.A. Under the circumstances, there is no suppression of facts.

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8.As far as the value is concerned, it cannot be said to be excess value, since the property was having an extent of 2 acres and odd in one block and 32 cents in the other block, and the value of the property in the year 1982 has got to be taken into account when the property was brought for sale. There was all possibility for the judgment debtors to raise objections when the upset price was to be fixed by the Court. Having failed to do so, now they cannot raise such a contention at this stage.

9.As regards the amendment of the decree, now at this juncture, it cannot be permitted since it is out of point of limitation. Even assuming that originally, the E.P. could be carried on, now, it is not the stage, in the considered opinion of the Court, for the simple reason that the property has been sold, and confirmation has also taken place, and it is in favour of the third party. Now, that sale cannot be set aside in the absence of any irregularity as one contemplated in the C.P.C.

10.As regards the last contention as to the collusion, there is no evidence to show that there was any collusion. Simply because the purchaser happened to be the son-in-law of the decree holder, it cannot be presumed that there was collusion. Hence, all the contentions were rightly rejected by the lower Court. This civil revision petition requires an order of dismissal, and accordingly, it is dismissed. No costs.

nsv/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:
The Additional Subordinate Judge
Salem

+ ONE CC TO MR. D. Shivakumaran, Advocate sr o. 36604

TEJ(CO)
NM(27.06.07)

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